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MICHAEL NODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

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CA. No. 76-3185
DC #CV644-73C2
Docket No. 78-1151

—•—
SAFE STOP BRAKE CORPORATION,
Petitioner,
v.
GENERAL MOTORS CORPORATION,
Respondent.

—•—
BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI

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INTRODUCTION

Petitioner sued Respondent for alleged infringement of a patent on a seat switch recessed in a seat. The District Court heard all of the evidence, including the oral testimony of witnesses for both Petitioner and Respondent. The District Court found that: (1) the patent is invalid for obviousness; (2) the patent is not infringed; and (3) Respondent first "invented" the allegedly infringing structure because it tested, released for production, and actually commenced commercial production prior to the filing date of Petitioner's patent.

Fact findings on item (3) were made by the District Court after hearing the testimony of Respondent's witnesses and resolving a conflict in testimony of Petitioner's witnesses. The Court of Appeals affirmed and denied a petition for rehearing.

The Petition seeks review on (1) a contrived constitutional issue of due process of law and, (2) an alleged conflict with applicable decisions of this Court.

ARGUMENT

I.

NO CONSTITUTIONAL ISSUE

The Petition claims that Petitioner was denied due process of law because both the District Court and the Court of Appeals applied a stricter standard of proof for Petitioner's alleged reduction to practice than for Respondent's reduction to practice.

This so-called constitutional issue is a contrived afterthought. It is raised for the first time in the Petition. In the District Court and in the Court of Appeals, Petitioner strenuously urged that it was the first inventor. Both Courts decided this fact issue in favor of Respondent. The constitutional issue now raised for the first time is only an attempt to bypass the affirmed District Court decision on this fact issue.

The thrust of Petitioner's argument is contained in the quotations of the testimony of a General Motors' witness (Petition pp. 12-13). The testimony is taken out of context and is not completely set forth. In any event it is part of the live testimony considered by the District Court in resolving the fact issue of first invention in favor of Respondent. It is not a constitutional issue by any standard.

II.

NO CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

In reaching its decision on obviousness, the District Court followed the path set forth in *Graham v. John Deere*, 383 U.S. 1 (1966), and subsequently reaffirmed in *Anderson's-Black Rock v. Pavement Salvage Company*, 396 U.S. 57 (1969); *Dann v. Johnston*, 425 U.S. 219 (1976); and *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273 (1976).

The Petition incorrectly ignores these pertinent decisions. There is no conflict between the affirmed District Court decision and the applicable law.

CONCLUSION

This suit is a conventional patent suit involving fact issues of infringement, validity, and reduction to practice. These were properly resolved by the District Court upon the basis of the testimony and properly affirmed upon appeal. The Petition should be denied.

Respectfully submitted,

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